

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS, JESUS DE JESUS AND ALUDIA MARIANO, RESPONDENTS.*G.R. No. L-49410. January 26, 1989*

Ponente: NARVASA, J.

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Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964.[1] Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the chief objective envisioned for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

While it is not, to be sure, reasonable to expect that a pre-trial will always result in the parties' reaching agreement as to all the matters specified in the rule, e.g., an amicable settlement or a submission to arbitration, amendments to the pleadings, stipulations or admissions of facts and of documents, preliminary reference of issues to a commissioner, etc.,[2] it is nonetheless certain that by it the Court can always bring about agreement on at least two (2) other matters that will aid in the prompt disposition of the action.

For one thing, a trial court can always compel the parties to simplify, or at the very least identify, the issues. The Court has the power to require the parties to make a formal statement of the issues of fact and of law involved in the action; to set out, in other words, which of their material averments of fact, or parts thereof, are admitted and which denied. It should be no argument, specially where there is some complexity or numerosity about the disputed facts alleged in the pleadings, that a reading of those pleadings will make possible the identification of the admissions and denials. The desirability and usefulness of the itemization in a single document (a) of the facts which are admitted -- and as to which, therefore, no evidence need be presented -- and (b) of those which are controverted -- and as to which proof must be adduced -- cannot be gainsaid. Moreover, the admitted and disputed facts being thus particularly stated, the determination of the issues of law becomes a relatively simple task. Since such an issue-identification document obviously requires little effort to draw up, allows identification of the triable issues by reference to one single document, instead of by tedious examination of all the pleadings every time a question of materiality of proof comes up, and limits the matters on which trial shall be had and on which adjudgment shall ultimately be made, it cannot but be deemed a forward step in the disposition of the suit, and should by all means be required at every pre-trial.

Again, it is unquestionably within the trial court's power to require the parties at the pre-trial to (a) state the number of witnesses intended to be called to the stand, their names and addresses, and a brief summary of the

evidence each of them is expected to give, as well as to (b) formally disclose the number of the documents and things to be submitted and to furnish copies thereof or a short description of the nature of each. The tenor or character of the testimony of the witnesses and of the writings to be adduced at the trial being thus made known, in addition to the particular issues of fact and law, it becomes reasonably feasible to require the parties to state the number of trial dates that each will need to put on his case, and maybe bring about a further agreement as to some other controverted facts, or an amendment of the pleadings, etc.

What needs stressing is that the parties as well as the Trial Court must realize that at the pre-trial, the parties are obliged not only to make formal identification and specification of the issues and of their proofs, as above described -- indeed, there is no reason why the Court may not oblige the parties to set these matters down in separate writings and submit them to the Court prior to the pre-trial, and then to discuss, refine and embody the matters agreed upon in a single document at or shortly after the pre-trial -- but also and equally as peremptorily, to directly address and discuss with sincerity and candor and in entire good faith each of the other subjects enumerated in Section 1, Rule 20, i.e., the "possibility of an amicable settlement or of a submission to arbitration," the "advisability of a preliminary reference of issues to a commissioner," and "such other matters as may aid in the prompt disposition of the action," inclusive of a resort to the modes of discovery.

Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court,[3] and when a party "fails to appear at a pre-trial conference (he) may be non-suited or considered as in default." [4] The obligation "to appear" denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subjects assigned by law to a pre-trial. And in those instances where a party may not himself be present at the pre-trial, and another person substitutes for him, or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative or the lawyer to have "special authority" to make such substantive agreements as only the client otherwise has capacity to make. That "special authority" should ordinarily be in writing or at the very least be "duly established by evidence other than the self-serving assertion of counsel (or the proclaimed representative) himself." [5] Without that special authority, the lawyer or representative cannot be deemed capacitated to appear in place of the party; hence, it will be considered that the latter has failed to put in an appearance at all, and he may therefore "be non-suited or considered as in default," [6] notwithstanding his lawyer's or delegate's presence.

These principles were applied by the Trial Court in the case at bar: first, against the defendants (now private respondents) who were declared in default for failure to appear at the pre-trial initially scheduled, and later -- after the default was lifted and another pre-trial ordered, despite plaintiff's (now petitioner's) evidence having already been received ex parte -- against said plaintiff which, in its turn, twice failed to make a proper appearance at the second, and a third, pre-trial and was on that account twice declared non-suited. It is the correctness of that application of principles adversely to petitioner by the Trial Court, sanctioned by the Appellate Tribunal, that is the chief issue in this appeal.

The case was commenced by a complaint filed by the Development Bank of the Philippines with the Court of First Instance of Masbate against the spouses Jesus de Jesus and Aludia Mariano. The complaint prayed for a judgment condemning the defendant spouses to pay a loan in the aggregate amount of P16,720.00 obtained by the latter from the plaintiff's predecessor-in-interest, the Rehabilitation Finance Corporation. The loan, payable with interest at six per cent per annum, was evidenced by five promissory notes, and was secured by a deed of assignment of the debtor spouses' leasehold rights over land covered by Fishpond Lease Agreement No. 396. Suit was brought when the spouses failed to pay the loan in accordance with its terms.[7]

The defendants' answer admitted the loan and the failure to pay the amortizations thereon but sought to avoid

liability by setting up the defense of laches, usury, and an agreement with respect to the fishpond: for its development by the plaintiff, as capitalist partner, and the defendants as industrial partners.[8] The Development Bank of the Philippines, hereafter simply DBP, filed a reply in which it denied under oath the averment of usury, and controverted the existence of the asserted partnership.

The defendants were initially declared in default for failure to appear for a conference on the date first set for the pre-trial, but after the DBP had presented its evidence ex parte, the Court set aside the order of default, on defendants' motion, and re-scheduled the case for pre-trial on May 17, 1971.[9]

At the second pre-trial, the attorney appearing for DBP was unable to produce any authority to represent his client at the conference. Consequently the Court declared DBP non-suited.[10] However, the order of non-suit was later reconsidered upon a showing by the DBP that notice of the pre-trial had not been sent to it, only to its lawyer.[11] The case was once again set for pre-trial.

On the appointed date, September 14, 1972, the DBP lawyer appeared together with the Assistant Manager of the DBP Legaspi Branch, a Mr. Alberto Garcia. Garcia presented a special power of attorney from his Branch Manager, investing him with authority to act for the DBP, and to sign any compromise agreement that might be agreed upon in accordance with the policies of the bank.[12] The defendants challenged the adequacy and efficacy of Garcia's power of attorney, claiming that the principal, the Branch Manager, did not himself have the power to enter into any amicable settlement of the bank's claims and so had delegated nothing to his Assistant.[13] The Court upheld the challenge and once again declared DBP non-suited.[14] DBP filed a motion for reconsideration but this was denied. DBP filed a second motion for reconsideration, this time alluding to a resolution of the DBP Board of Governors (No. 4696) dated November 8, 1972 supposedly authorizing the Branch Manager, the Assistant Manager and the Branch Cashier, to represent DBP at the pre-trial.[15] But this was also denied, for lack of merit.[16]

DBP then went up to the Court of Appeals. Here, too, it failed. The Appellate Court affirmed the Trial Courts order of dismissal, by decision rendered on October 24, 1978.[17] It is this decision of the Court of Appeals which DBP, by its petition for review on certiorari, Would have this Court reverse.

At the time of the challenge to the authority of the DBP Assistant -Manager to represent the bank at the pre-trial, the authority to compromise claims due to government owned or controlled corporations, such as the DBP, was conferred by law (R.A. No. 2266) on the Auditor General as regards claims not exceeding P1,000.00, and on the President of the Philippines, as regards claims exceeding P1,000.00, it being additionally required that if the claim exceeded P10,000.00, the approval of Congress had to be obtained. It was not until November 20, 1972, upon effectivity of Presidential Decree No. 61, that authority to compromise, release, or otherwise settle claims due to the DBP was expressly and exclusively conferred upon its Board of Governors. Therefore, according to the Court of Appeals, when that Board of Governors approved and adopted Resolution No. 4696 on November 8, 1972 -- granting authority to the Branch Manager, Assistant Manager and Branch Cashier to represent it at the pre-trial -- the Board itself had no power to compromise or otherwise settle claims due to it; it would not receive that power until 12 days later, November 20, 1972, on promulgation of P.D. No. 61 as aforesaid; hence, the Board could not have transmitted to its designated delegates that power to compromise, release, or otherwise settle claims, which it did not yet possess at the time.

DBP suggests that it was error to Consider an interval of two months (from September 14, 1972, when the authority of the DBP Assistant Manager was first challenged to November 20, 1972, when PD 61 gave the DBP Board exclusive authority to compromise its claims), or the much shorter one of twelve days (from November 8, 1972, when the DBP passed the resolution giving the Assistant Manager authority to represent it at the pre-trial, to

November 20, 1972, when PD 61 was promulgated), as giving rise to an irredeemably fatal defect, foreclosing any possibility of relief to the petitioner. The argument is not without plausibility. After all, as this Court has held,[18] the rule on pre-trial was not meant to be "an implacable bludgeon" to smite every party guilty of an infraction of the rules, "but ** a tool to assist the trial courts in the orderly and expeditious conduct of trials," and should hence be liberally construed to the end that there may be not merely a speedy, but more importantly, a just determination of the merits of every action.

However, the petitioner's case rests on much firmer ground, jurisprudential support for which is not wanting. As already adverted to, after issues had been joined in the Trial Court and a first pre-trial conference had been scheduled, the private respondents failed to appear thereat, were on that account declared in default and DBP was allowed to, and did, present its evidence ex parte. The effect of these successive incidents was to terminate the pre-trial stage of the action and to limit the effect of the subsequent lifting of the order of default issued against the private respondents to the restoration of their right to notice of subsequent proceedings and to take part in the trial.[19] Such lifting, as has also been held by this Court on another occasion, did not revert the action to the pre-trial stage or authorize, much less render mandatory, a second pre-trial.[20]

"The defendant Pioneer Insurance & Surety Corp. having complied with the order of the Court to appear and attend this pre-trial, and had manifested its opposition to settling the case amicably, said party may no longer be compelled to attend a second pre-trial hearing, and neither may it be punished by the court by its order declaring said defendant as in default. The mandatory character of a pre-trial and the serious consequences confronting the parties in the event that each party fails to attend the same must impose a strict application of the Rule such that where we find no authority for the Court to call another pre-trial hearing, as in fact there is none in said Rule, the conclusion is inescapable that the respondent Judge committed a grave and serious abuse of discretion and acted in excess of jurisdiction in declaring defendant Pioneer Insurance & Surety Corp. as in default for failure to attend the second pre-trial called by the Judge on February 29, 1972. In other words, there is nothing in the Rules that empowers or authorizes the court to call a second pre-trial hearing after it has called a first pre-trial duly attended by the parties, and lacking such authority, the court perforce lacks the authority to declare a failure to prosecute on the part of plaintiff for failing to attend such second pre-trial; it also lacks the authority to declare the defendant 'as in default' by reason of the latter's failure to be present at the said second pre-trial."

The scheduling of a second pre-trial after DBP had finished presenting its evidence frustrated, rather than advanced, the primary purpose of pre-trials of abbreviating trial by limitation and simplification of the issues, if not indeed of dispensing altogether with the necessity of trial. Neither is that purpose served by non-suiting a plaintiff at such a stage of the action. The correct course would have been to proceed with the trial, in fact already well under way, allowing the defendants (private respondents) to cross-examine the plaintiff's (DBP's) witnesses and thereafter to offer their evidence.

WHEREFORE, finding sufficient merit in the petition, the Court hereby grants the same. The Decision of the Court of Appeals complained of is reversed, and the order dismissing the petitioner's complaint is set aside. The Trial Court is directed to continue with the trial of Civil Case No. 280-II in the manner above indicated and thereafter render judgment therein as the facts and the law may warrant. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The date of effectivity of the revised Rules of Court, superseding the Rules of 1940

[2] Sec. 1, Rule 20, Rules of Court

[3] Id

[4] Sec. 2, Rule 20

[5] Home Insurance Co. v. U.S. Lines Co., 21 SCRA 863, 866; Barrera v. Militante, 114 SCRA 323

[6] Sec. 2, Rule 20

[7] Record on Appeal, pp.5-20. The action was docketed as Civil Case No. 280-11 of the Court of First Instance of Masbate, Branch II, Cataiñgan, Masbate

[8] Id., pp. 23 et seq

[9] Id., p. 45

[10] Id., pp. 46-48

[11] Id., pp. 60-63

[12] Id., pp. 63-67

[13] Id., p. 70

[14] The order of non-suit and dismissal was rendered by Hon. Pedro L. Quitain: rollo., 71

[15] Rollo, pp. 92-94

[16] 3 Id., p. 101

[17] Gutierrez, Jr., J., ponente, and San Diego and Cuevas, JJ., concurring

[18] Tejero v. Rosete, 137 SCRA 69, 70

[19] Sec. 2, Rule 18, Rules of Court

[20] Pioneer Insurance & Surety Corp. v. Hontanosas, 78 SCRA 447, 460

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